

Annex to Enclosure 4

**SUMMARY OF RESPONSES (SOR)
DOCUMENT FOR THE**

***DRAFT IMPLEMENTING RULE ON
AIRCRAFT IDENTIFICATION***

Formal Consultation - 1 April to 5 May 2010

DOCUMENT CONTROL

DOCUMENT CHANGE RECORD

The following table records the complete history of the successive editions of the present document.

Edition Number	Edition Date	Reason for Change	Pages Affected
0.1	10/05/10	Initial creation – Draft Early 'Strawman' SOR	All
0.2	16/05/10	Completion of Draft Early SOR for Internal Review	All
0.3	23/05/10	Minor Amendments Following Internal Review	All
0.4	04/06/10	Update Following Stakeholder Workshop	All
1.0	23/06/10	Released version	

Status: Released	Edition No: 1.0	Date: 23 June 2010	Document No: SES/IOP/ACID/SOR/1.0
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1. INTRODUCTION

1.1 GENERAL

The continued use of Secondary Surveillance Radar (SSR) Mode A codes to achieve unambiguous and continuous individual aircraft identification in European airspace has come under increasing scrutiny over recent years. Consequently, in 2008 the EUROCONTROL Provisional Council (PC) invited the Air Navigation Services Board (ANSB) to devise a strategy to overcome SSR code shortages. In accordance with the conclusions of a Preliminary Impact Assessment on the issues, an ANSB Aircraft Identification Task Force proposed an evolutionary approach to be taken between 2012 and 2020, which would combine the use of the 'Downlinked Aircraft Identification Feature', a Centralised SSR Code Assignment and Management System (CCAMS) and Enhanced Originating Region Code Assignment Method (E-ORCAM) capabilities. It was also decided that Single European Sky (SES) regulation would be needed to support the implementation of the proposed strategy.

The ANSB approved what is now referred to as the Aircraft Identification Strategy, and it was then endorsed at PC/31 on 7th May 2009 and accepted by the Single Sky Committee (SSC). EUROCONTROL subsequently undertook a detailed Interoperability Analysis with the aim of identifying the minimum regulatory coverage for a potential supporting SES interoperability implementing rule on Aircraft Identification (hereinafter referred to as the draft ACID IR) in terms of the subjects and nature of regulatory prescriptions that would be required to enact the agreed strategy between 2012 and 2020. A written informal consultation on this Interoperability Analysis and a proposed regulatory approach took place with Stakeholders between 1 October 2009 and 23 October 2009.

The Stakeholder inputs from the informal consultation were taken into account and a draft ACID IR was subsequently developed. This drafting work was undertaken within an enlarged scope of a mandate to EUROCONTROL from the European Commission to develop implementing rules on Surveillance Performance and Interoperability Requirements (SPI). As required, the draft ACID IR was then submitted for formal consultation.

1.2 SUBJECT AND SCOPE OF CONSULTATION

The draft ACID IR was circulated for comment between 1 April and 5 May 2010 using the mechanisms of the EUROCONTROL Notice of Proposed Rule-Making (ENPRM) process. The reduced consultation period took into account the fact that the draft ACID IR is fully based on the Aircraft Identification Strategy developed by the ANSB and endorsed by the PC following extensive consultations.

The consultation documentation consisted of the draft ACID IR, the supporting draft Justification Material and a Response Sheet. In the Response Sheet, the addressees were asked to express their formal view on the draft text of the ACID IR. Copies of the documentation were sent directly to the following:

- Civil and Military regulatory authorities and key ATS providers of each EUROCONTROL Member State;
- Regulatory authorities of States' observers at the Provisional Council;
- EC, ECAC, FAA, ICAO, JAA, NATO;
- International Organisations having observer status at the Provisional Council;

- Key trade and professional associations having observer status at the Provisional Council;
- Chairmen of the following bodies:
 - ANSB (copy Secretary of ANSB);
 - CMIC (copy Secretary of CMIC and Head of DCMAC);
 - PRC (copy Secretary of PRC and Head of PRU);
 - SRC (copy Secretary of SRU);

The documentation was also made available through existing working arrangements and to members of the public via the ENPRM website.

1.3 PURPOSE AND STRUCTURE OF DOCUMENT

The purpose of this Summary of Responses (SOR) document is to provide a consolidation of the main comments received as part of the formal consultation activity, as well as to provide the EUROCONTROL responses to, and disposal of, those comments. An early draft version of the SOR was provided to support a Stakeholders' Workshop on 1 June 2010 to discuss the outcome of the consultation. On completion of the Workshop, the draft SOR was updated to provide this final version of the SOR, which will be published on the EUROCONTROL website.

The responses section (Section 2) of the document is structured as follows:

- General Response – providing a general analysis of the comments received;
- Consolidated Comments and Responses – summarising the main comments made and providing the associated responses.

Two annexes are provided with the document as follows:

- Annex A contains a list of those Stakeholders that provided comments on the proposed regulatory approach;
- Annex B provides a table containing all of the comments provided by Stakeholders, the proposed 'disposal' by EUROCONTROL, and cross-references to the responses within the main body of the document.

2. OUTCOME OF FORMAL CONSULTATION

2.1 GENERAL RESPONSE

2.1.1 Review of Comments

The review of comments was carried out by a Review Group, which was established as an Agency working group to address the comments received. The Review Group comprised Agency staff from the SES Framework Development (SF) Unit and the Aircraft Identification Programme, supported by external regulatory and subject-matter experts.

2.1.2 Overall Response

A total of 24 Stakeholders responded to the consultation, with the vast majority (87.5%) coming from National Supervisory Authorities (NSA) and Air Navigation Service Providers (ANSP). The 24 Stakeholders provided a total of 39 separate comments.

Over two-thirds of the respondents (71%) stated that the draft ACID IR was acceptable in its current form, although seven of these Stakeholders felt that it could be improved. Seven Stakeholders felt that amendments would have to be made to draft ACID IR before it could be confirmed as being acceptable.

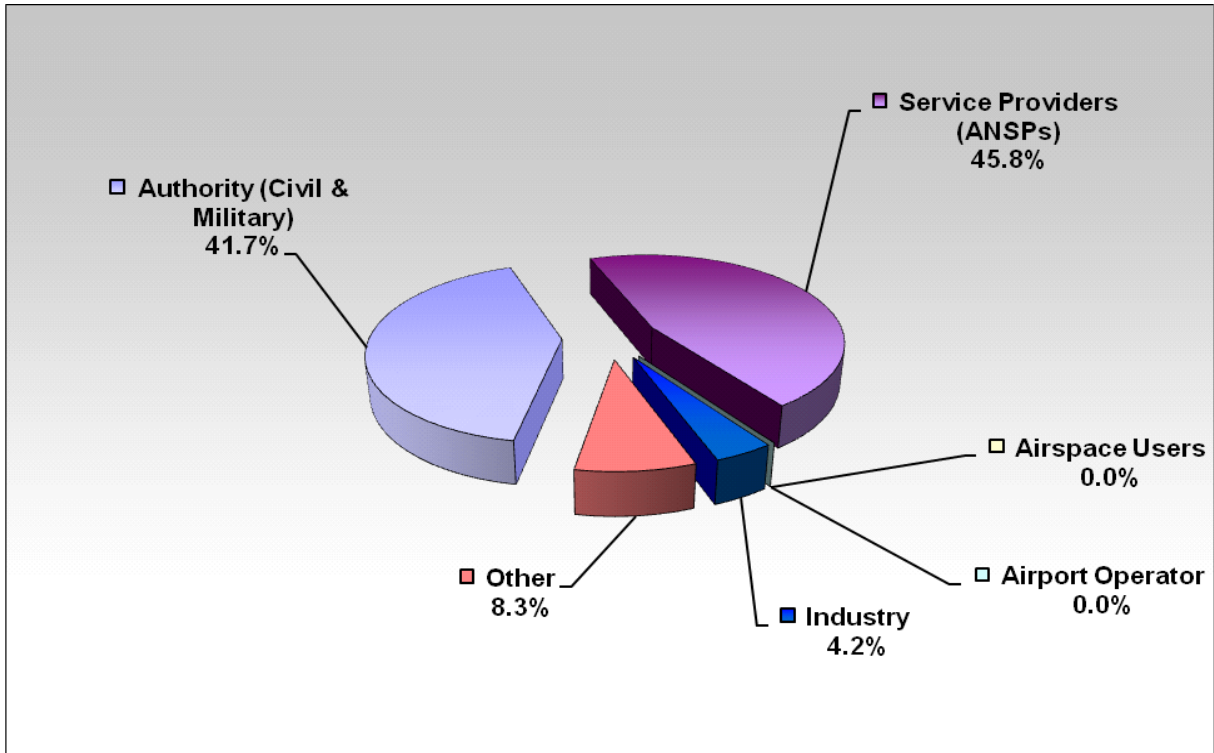
The number of responses from each category of Stakeholder is shown in the table below.

ENPRM/10-003
Draft Implementing Rule on Aircraft Identification
Comments Received By Stakeholder Category

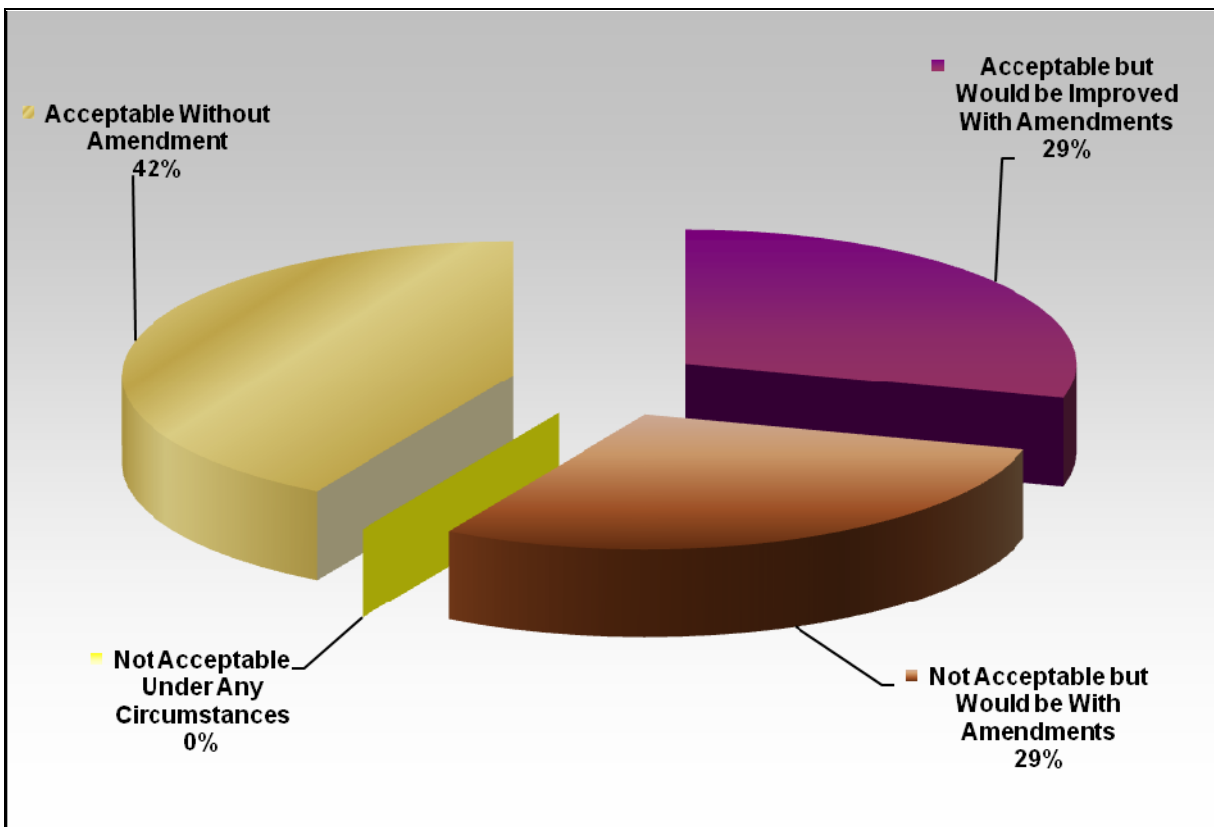
	A	B	C	D	Total by Stakeholder	%
Authority (Civil & Military)	4	3	3	0	10	41.7%
Service Providers (ANSPs)	5	2	4	0	11	45.8%
Airspace Users	0	0	0	0	0	0.0%
Airport Operator	0	0	0	0	0	0.0%
Industry	0	1	0	0	1	4.2%
Other	1	1	0	0	2	8.3%
Total Received Comments by Category	10	7	7	0	24	100%
Percentage (%)	41.7%	29.2%	29.2%	0.0%	100%	

- A = Acceptable without amendment
- B = Acceptable but would be improved with amendments
- C = Not acceptable but would be acceptable with amendments
- D = Not acceptable under any circumstances

The distribution of the Stakeholders that submitted comments during the consultation period is shown in the chart below.



The breakdown of the overall general responses about the regulatory approach is shown in the chart below.



2.2 CONSOLIDATED RESPONSE

2.2.1 Introduction

This section summarises the issues arising from the formal consultation on the draft ACID IR. Other comments, including those of a supportive nature, those correcting minor spelling or grammatical errors, those outside of the scope of the draft ACID IR and/or those not requiring a response have not been included for the sake of brevity. However, all comments submitted are included verbatim in the table at Annex B.

The section is broken down into two main sub-sections: 'Key Issues' and 'Other Issues'.

The comments included under the first sub-section are those that were seen to represent the 'main' issues arising from the consultation.

The second section summarises other comments received, which were seen as less critical to further progress in the development of the draft ACID IR.

The EUROCONTROL responses to both sets of comments are provided.

2.2.2 Key Issues

2.2.2.1 SSR Conspicuity Code

Comment

One Stakeholder felt that, where individual aircraft identification is established using downlinked aircraft identification, Article 3(6)(c) in the draft ACID IR could allow neighbouring States to determine the SSR conspicuity code to be used. It was argued that this would lead to different conspicuity codes being used, such that the functionality no longer becomes 'conspicuous'. Clarification was, therefore, requested on how EUROCONTROL intended to ensure compliance with ICAO Regional Code Allocation Plans if this variability was allowed.

Another Stakeholder argued that the SSR conspicuity code selected for the assignment to aircraft whose identity is established using downlinked aircraft identification should be used solely for that purpose. An amendment to Article 3(6)(c) was suggested accordingly.

Stakeholders from the Netherlands argued that the use of the SSR conspicuity code only in conjunction with IFPS 'flagging', as described in Annex II paragraph 2(a) of the draft ACID IR, is too limited. It was stated that LVNL has plans to use the SSR conspicuity code A1000 in domestic off-shore helicopter operations within the Class G airspace of 'North Sea Area Amsterdam'. Although these IFR GAT flights cannot be flagged by the CFMU, LVNL would like to use the SSR conspicuity code A1000 for these flights. Accordingly, it was requested that a paragraph be added to the draft ACID IR to allow special domestic use of the SSR conspicuity code where the "absence of nuisance for neighbouring non-ELS States is guaranteed".

Response

The prescription in Article 3(6)(c) specifically requires a single SSR conspicuity code to be agreed with other EU Member States, not just neighbouring States. This does not allow neighbouring States to unilaterally choose what conspicuity code they wish to assign or to use the code for other purposes. However, to improve clarity, Article 3(6)(c) will be amended.

It is accepted that there would be SSR code-saving benefits from a 'local' use of the SSR conspicuity code A1000 on ELS capable IFR GAT flights operating in 'declared airspace' but which, for technical reasons associated with the IFPS, cannot be 'flagged'.

Action

Article 3(6)(c) will be amended to read:

"a single conspicuity code is agreed by all Member States and coordinated with European third countries for assignment solely to aircraft where individual aircraft identification is established by using downlinked aircraft identification."

Annex II of the draft ACID IR will be amended to allow the assignment of the SSR conspicuity code A1000 to compliant IFR GAT flights remaining within 'declared airspace' but which have not been flagged by IFPS. The approach will be to set out the situation where A1000 shall be used, as a minimum, without then precluding other situations where Member States and ANSPs may wish to additionally assign the code to aircraft.

2.2.2.2 Military Issues and Requirements

Comment

One military authority confirmed that its approach control units occasionally provide ATS to IFR GAT within their areas of responsibility. However, it was stated that these units will not be ready to use the 'Downlinked Aircraft Identification Feature' for ensuring individual aircraft identification by February 2012. Therefore, it was argued that an exemption policy needs to be defined in order to accommodate the continued use of conventional discrete SSR code operations for these units.

In addition, the military authority stated that provisions need to be established in the draft ACID IR to enable continued Operational Air Traffic (OAT) training and operations using discrete SSR codes for achieving individual aircraft identification, as well as for the identification of the controlling unit.

Another military authority stated that, as ANSPs, some of its entities provide IFR GAT services. Nevertheless, it was argued that military ANSPs are not subject to the same SSR code shortages that are faced by civil ANSPs. This military authority also stated that, for technical and long procurement cycle reasons, its military radar stations providing surveillance services to IFR GAT flights would not all be able to establish individual aircraft identification using downlinked aircraft identification by 2 January 2020. Therefore, it was argued that there was a need to allow military authorities to continue to establish individual aircraft identification using discrete military SSR codes beyond 2020.

Response

The draft ACID IR only applies to IFR GAT flights and, therefore, the requirements do not extend to military OAT flights. The allocation of 'Local' SSR codes for enabling OAT training and operations, as well as for the identification of the controlling unit, is expected to be addressed by the management of scarce resources part of the European Commission's forthcoming implementing rule on Network Management Functions.

It will be left to individual Member States to determine how to comply with the overall requirement to ensure that a minimum of 50% of IFR GAT flights can be covered by a capability to use the 'Downlinked Aircraft Identification Feature' to ensure individual aircraft identification. This overall '50% capability' will need to take into account any specific individual civil and military units that will not have the required capability by February 2012.

Military authorities have already had many years of prior notification of the civil Mode S requirements and deployment in the 'core' area of Europe, and so it is considered that there is no reasonable justification to allow a specific military exemption beyond 2020 for IFR GAT flights. The use of SSR codes for identifying IFR GAT flights must be phased out, and an 8-year transition period from 2012 to 2020 is considered to be reasonable. It is also noted that only one military authority has requested an exemption for beyond 2020. It is felt that Member States affected by this issue should make alternative arrangements for the control of IFR GAT where military ATC units normally providing these services cannot be provided with access to suitable downlinked aircraft identification data by January 2020.

Action

Nil required.

2.2.2.3 In-Flight Changes of Aircraft Identification

Comment

One Stakeholder felt that the wording of Article 7(6) in the draft ACID IR gives an impression that there may be occasion to change the downlinked aircraft identification in flight. It was noted that not all aircraft have the capability to change the downlinked aircraft identification in flight and so, if there is a requirement, the capability should be included within either the draft ACID IR or the draft SPI IR. If there is not a requirement, the Stakeholder considered that the phrase "unless requested by the service provider" should be deleted from the text of Article 7(6).

Response

The applicability of Article 7(6) is only to those aircraft having the capability to modify the downlinked aircraft identification during the flight. There is no requirement to mandate such a capability in all aircraft. For those aircraft that have the capability, it is imperative that the downlinked aircraft identification is not changed unless instructed by ATC and, as such, Article 7(6) has been identified as a safety requirement. Nevertheless, it is agreed that Article 7(6) should be amended to improve clarity.

Action

Article 7(6) will be amended to read:

"Operators of those aircraft having the capability to change the downlinked aircraft identification referred to in paragraph 4 when airborne shall take the necessary measures to ensure that the downlinked aircraft identification is not changed during the flight unless requested by the air navigation service provider."

2.2.2.4 Code-Conflict Alerts

Comment

One Stakeholder felt that, depending upon interpretation, Article 3(5)(b) may be too restrictive for the ANSPs using the 'Downlinked Aircraft Identification Feature' as a primary means of establishing individual aircraft identification by 9 February 2012. It was argued that ICAO Doc 4444 (at paragraph 8.1.4) does not mandate a requirement for code-conflict alerts, only a recommendation. It was further argued that, as stated in the Justification Material, there should be no additional requirement to improve the SSR code assignment capabilities within the systems of these ANSPs. The Stakeholder therefore considered that Article 3(5)(b) should not be applied to ANSPs using the 'Downlinked Aircraft Identification Feature' in February 2012.

Response

Article 3(5)(b) applies to duplicated SSR code assignments, not to duplicated downlinked aircraft identification. The safety impact of any duplication of SSR codes, and the ability to detect them, is the main issue behind this prescription. This has been identified as a Safety Requirement for the draft ACID IR. ANSPs using the 'Downlinked Aircraft Identification Feature' as the primary means of establishing individual aircraft identification by February 2012 will also continue to need to assign discrete SSR codes to flights that are not eligible for use of the SSR conspicuity code A1000. Nevertheless, it is accepted that the requirement to provide alerts of code conflicts to controllers could be fulfilled directly by systems or by appropriate procedures.

Action

Article 3(5) will be amended to read as follows:

"Air navigation service providers shall ensure that:

- (a) systems referred to in Article 1(2) (b) to (d) are deployed as necessary to support the requirements laid down in paragraphs 3 and 4;*
- (b) systems referred to in Article 1(2) (b) to (d) or procedures are deployed as necessary to enable controllers awareness of occurrences of unintentionally duplicated SSR code assignments "*

2.2.2.5 SSR Code Retention Checks

Comment

A comment was raised on the SSR code retention checking requirements set out in Annex II paragraph 5 of the draft ACID IR. Two Stakeholders from the same Member State felt that this prescription was only applicable to aircraft being transferred from neighbouring States that use the E-ORCAM method, and that no similar requirement was prescribed for the case where aircraft are transferred from States that will use CCAMS. It was, therefore, considered uncertain how the interface between 'CCAMS States' and 'non-CCAMS states' was supposed to be handled in terms of SSR code retention checking. The Stakeholders argued that 'CCAMS States' should ensure that assigned SSR codes could be retained when flights are bound for ELS airspace.

Response

The need for ANSPs to conduct SSR code retention checks already exists within ICAO material. The draft ACID IR does not require anything new in this regard. Annex II (5) applies to all States using the 'Downlinked Aircraft Identification Feature' for ensuring individual aircraft identification, and it places a requirement on them to check whether or not any current SSR code assignments on flights being transferred to them can be retained. The aim of the prescription is to minimise the need to make codes changes and to minimise the risk of downstream code conflicts occurring. The prescription does not distinguish between whether the current code assignment has been made by E-ORCAM or CCAMS assignment methodology. It should also be noted that there is a similar code retention checking requirement in Annex III (b), which is applicable to those ANSPs who are not using downlinked aircraft identification by February 2012 as the means of ensuring individual aircraft identification.

Action

Nil required.

2.2.3 Other Issues

2.2.3.1 Scope of Draft ACID IR

Comment

A request was submitted for the performance requirements to be further clarified in terms of what is meant by 'flights'. In particular, it was considered to be unclear whether or not VFR flights and local (national) flights were included in the performance requirements for using downlinked aircraft identification by February 2012.

One Stakeholder felt that there was a potential for 'scope creep' in the applicability of the draft ACID IR set out in Article 3(2) because of the reference to "all flights". A suggestion was made to amend Article 3(2) to improve clarity.

Response

The applicability framework of the regulatory requirements is clearly defined in Article 1 (Subject matter and scope) of the draft ACID IR, and all the subsequent requirements shall be read in the context of this Article. This is wholly consistent with EU regulatory drafting requirements. The draft ACID IR applies only to IFR GAT flights, whether they are national or international.

Action

Nil required.

2.2.3.2 Airspace of Applicability of the Draft ACID IR

Comment

The consultation submission from the Paris office of ICAO argued that the airspace of applicability set out in Article 1(3) of the draft ACID IR was not compliant with the existing ICAO provisions contained in Annex 2 and Annex 11. It was argued that if EU Member States would also like to apply the requirements of the draft ACID IR to areas outside of the SES airspace, they can do this in line with existing ICAO provisions (e.g. a Regional Air Navigation Agreement) but the requirements could not be enforced by them in other ICAO regions. A suggestion was provided to amend Article 1(3) accordingly.

An ANSP argued that, for coastal States, FIR boundaries often extend beyond the 12NM limit of territorial waters and that EU rules relating to airspace, whether they are derived from SES, EASA or elsewhere, are presumed to be mandatory only in the territory to which the EU treaties apply (i.e. States' land masses and territorial waters). It was further argued that, beyond this, States responsible for the provision of air navigation services in 'High Seas' airspace may choose to voluntarily apply some or all of the requirements of a particular piece of EU legislation, provided that these are not in conflict with the ICAO Rules of the Air. It was stated by the Stakeholder that the draft ACID IR was, therefore, presumed to apply directly to only those aircraft flying within SES airspace in accordance with the service provision Regulation, and clarification was requested to confirm this presumption.

It was also noted by the Paris office of ICAO that Article 3(1) of the draft ACID IR requires Member States to implement the defined aircraft identification capabilities in their FIRs (as specified in Annex I) by the defined implementation date of 2012. It was argued that this is a clear change to the currently defined facilities and services that are described for each FIR in the current version of the ICAO EUR ANP and, therefore, the draft IR will need to be

updated/aligned with the ANP amendment procedure. Consequently, it was considered that there should be a note added to Article 3 explaining the link to the EUR ANP.

A query was raised by one Stakeholder about why the list of applicable airspace in Annex I of the draft ACID IR was limited to specific FIRs/UIRs. It was considered by this Stakeholder that there should be a harmonised approach and that the current draft Annex I discriminates between the Member States. Another Stakeholder questioned why Switzerland had been excluded from Annex I despite its planned deployment of a capability to use the 'Downlinked Aircraft Identification Feature' by 9 February 2012.

Response

Article 1(3) in the draft ACID IR is a standard provision for an interoperability IR, which is wholly consistent with Article 1(3) of Regulation (EC) No 551/2004 (the airspace Regulation), amended by Regulation (EC) 1070/2009. However, it is accepted that greater clarity could be provided by directly referencing the amended airspace Regulation.

The prescriptions in the draft ACID IR have been developed to be entirely consistent with the procedures for aircraft identification set out in ICAO Doc 4444 (PANS-ATM). However, State obligations to ICAO in terms of updating the ICAO EUR ANP are outside the scope of SES interoperability IRs, and it is considered that this issue is adequately covered by Member States' obligations as signatories to the Chicago Convention. Nevertheless, a new 'Recital' could be added to the draft ACID IR to remind Member States of their responsibilities ensure the EUR ANP reflects any changes to facilities and services that result from the implementation of the IR.

The comments about the applicable airspace contained in Annex I of the draft ACID IR are somewhat surprising. Annex I fully reflects the ANSB Aircraft Identification Strategy, which has been endorsed by the PC and taken into account by the European Commission and the SSC when it was decided to extend the scope of the SPI mandate. The Strategy has been developed over the past 18 months and has involved considerable consultation with Stakeholders. In terms of Switzerland, an EU Regulation cannot apply directly to a EUROCONTROL Member State that is not also an EU Member State. However, as a result of a bilateral agreement between Switzerland and the EU, the SES legislation can apply to Switzerland, but only after its transposition into the Swiss national legislation. It should be noted that the EUROCONTROL Aircraft Identification Programme is coordinating the implementation of the Strategy in participating EUROCONTROL Member States, including Switzerland.

Action

Article 1(3) of the draft ACID IR will be amended to read:

"This Regulation shall apply to all flights operating as general air traffic in accordance with instrument flight rules within the airspace defined in Article 1(3) of Regulation (EC) No 551/2004, amended by Regulation (EC) 1070/2009."

A new Recital will be added to the draft ACID IR reminding Member States of their obligations to ensure that any changes to services and facilities that result from the implementation of the ACID IR are reflected in the ICAO EUR ANP FASID (Facilities and Services Implementation Document) through the normal proposal for amendment procedure.

2.2.3.3 Perceived Ambiguity with the Regulatory Drafting

Comment

It was felt by one Stakeholder that interpretation of the draft ACID IR is ambiguous in many places and that the explanation provided by the draft Justification Material often refers to Community Specifications that do not yet exist. It was also considered that there is a close relationship between the draft ACID IR and the foreseen Network Management Function implementing rule (NMF IR), but the latter is not yet available. Therefore, it was argued that this leaves the draft ACID IR open for interpretation, which is difficult to accept.

Another Stakeholder considered that paragraph 2 of Annex II is not "fail-safe" or "fail-soft" from either the "real-world" or "operational perspective". It was argued that it should be rewritten to avoid double-negatives, and in a way that establishes a "fail-safe/fail-soft system design and functionality". A suggestion was made to improve the regulatory drafting by specifying the routine circumstances for when the SSR conspicuity code "may" be assigned, and then to separately detail the systemic circumstances (exceptions) for when the SSR conspicuity code shall not be assigned.

A query was also raised on Annex II of the draft ACID IR about what 'entity' (i.e. who) should declare the airspace volumes where individual aircraft identification is established by using downlinked aircraft identification to the centralised flight planning processing and distribution service. It was felt that the role of the various Stakeholders interested in the declaration of airspace should be clarified, especially in States where more than one ANSP is active.

Response

The draft ACID IR defines the methods and operational processes for aircraft identification and any Community Specifications will provide some potential, but not exclusive, Means of Compliance for Stakeholders. The NMF IR is expected to define how overarching processes for SSR code allocation are managed, and so the ACID and NMF IRs will support each other but will not overlap. Therefore, the availability of Community Specifications and an NMF IR is not a prerequisite for the development and implementation of the draft ACID IR.

With regard to the regulatory drafting of paragraph 2 of Annex II, the use of "may" in a regulation denotes an optional requirement. Therefore, it is considered that full acceptance of the suggested changes to Annex II would undermine one of the major objectives of the draft ACID IR. The aim is to maximise the assignment of the SSR conspicuity code A1000 and minimise the use of discrete codes. Notwithstanding this, the structure of Annex II will be revisited to try and provide greater clarity on requirements and on any specific allowed exceptions to these requirements

Article 3(6)(a) clearly places the obligation on Member States to ensure that volumes of airspace where individual aircraft identification is established by using downlinked aircraft identification are declared to the centralised flight planning processing and distribution service by their ANSPs. It is accepted that, in practice, ANSPs may wish to liaise directly with the CFMU, but the overall obligation to ensure that the requirement is correctly fulfilled remains with the NSAs.

Action

Annex II of the draft ACID IR will be re-structured to more clearly express the minimum SSR conspicuity code A1000 assignment requirements and the exceptions to these requirements.

2.2.3.4 Role of IFPS

Comment

One Stakeholder felt that the current draft ACID IR, by specifically prescribing reliance on IFPS, enshrines the existence of the IFPS within European law. However, it was argued that the mandating of specific means should be avoided and the specific reference to IFPS should be removed.

It was further argued that, as currently written, the whole system relies on the correct functioning of the IFPS. An example was provided where, if the IFPS erroneously communicates that a flight is eligible, but the flight is actually not eligible, then the flight shall without exception be assigned the SSR conspicuity code because non-assignment of the conspicuity code would result in an explicit breach of the regulation. Therefore, it was felt that IFPS must be: explicitly included within the scope of systems of Article 1; explicitly subject to specified functional capabilities and performance requirements; and explicitly subject the same 'verification of systems' requirements as apply to the ANSPs.

Response

IFPS has already been specifically 'enshrined' within European law through Regulation (EC) No 1033/2006, which defines IFPS as: "Integrated Initial Flight Plan Processing System' (hereinafter IFPS) means a system within the European Air Traffic Management Network through which a centralised flight planning processing and distribution service, dealing with the reception, validation and distribution of flight plans, is provided within the airspace covered by this Regulation". The roles and responsibilities of IFPS, including associated verification requirements, are already defined in the Regulation (EC) 1033/2006, through appropriate obligations placed on the Member States.

In the situation where IFPS may mistakenly 'flag' a non-compliant flight, the ANSP is unlikely to be able to subsequently correlate the downlinked aircraft identification feature with the corresponding aircraft identification entered into the Flight Plan for the flight. A discrete SSR code will, therefore, be assigned by the ANSP instead of the SSR conspicuity code A1000 (as allowed for in the 'exception' prescribed in Annex II point 2(b)). If IFPS mistakenly 'flags' an ELS-capable aircraft that is actually due to exit from 'declared airspace' at some point along its planned route, the prescribed 'exception' at Annex II point 2(e) comes into play, along with the requirements for formal arrangements prescribed in Annex II point 6(a). In this case, a discrete SSR code will be assigned to the flight. Notwithstanding this, the proposed revision of Annex II described in paragraph 2.2.3.3 of this SOR will provide further clarity on these requirements.

Action

Nil required.

2.2.3.5 Verification and Conformity Assessment

Comment

One Stakeholder considered that it would be difficult to classify 'routes', as set out in Article 3(1) of the draft ACID IR, when they are not pre-defined, as in the case of 'free-route' airspace. Accordingly, a proposal to amend Article 3(1) was made.

Another Stakeholder argued that Article 4(1) of the draft ACID IR is too restrictive concerning safety assessment methodology. It was argued that the result should be regulated and not the means, because alternative methods can give the same results.

A query was also raised on whether or not conformity and suitability for use of constituents needed to be checked on legacy systems under the terms of Article 5. It was argued that it is not possible to ask manufacturers to provide a Declaration of Conformity or Suitability for Use for older systems and, therefore, these requirements should be limited in time. For example, systems in use before 20 October 2005 should be exempted. It was suggested that this could be achieved by adding a new Article 5(3) that excludes legacy systems and specifies an appropriate exemption date.

It was also felt that the draft ACID IR is ambiguous in several places with regards to the requirements for Conformity Assessment and Certification of airborne constituents. It was therefore, suggested that Article 5(1) be amended to clarify the requirements by pointing to specific systems in Article 1(2) rather than all the systems in Article 1(2).

It was argued that a significant effort would be required by Stakeholders in order to set up a process with which to comply with the verification requirements of Article 6. It was, therefore, considered that a new Article should be inserted at the end of the draft ACID IR to set out suitable transitional arrangements for the implementation of this part of the requirements. A suggestion was made for a transition period to be applied to the verification process of all systems listed in Article 1(2) of at least one year after the entry into force of the implementing rule.

A query was raised on how the performance requirements in Article 3(1) should be verified by Stakeholders, and another Stakeholder requested amendments to the draft ACID IR to alleviate foreseen difficulties for obtaining evidence on the competences described for personnel involved in the verification process.

Response

The comment about the potential challenges of classifying routes in 'free-route' airspace is noted, and an amendment to Article 3(1) will be developed accordingly.

The draft ACID IR does not address the actual safety assessment methodology to be followed, only the high level elements of the process that has to be conducted. The methodology to be followed is left to the discretion of ANSPs/NSAs. Article 4(1) is wholly consistent with Regulation (EC) No 2096/2005 in this regard.

Article 5 refers to constituents and it is the responsibility of the manufacturer to issue the appropriate declarations. The European Commission's interpretation is that the declaration should be issued before a constituent is "put on the market". Therefore, the requirements do not apply to constituents already integrated into systems. Moreover the draft ACID IR does not specifically identify any constituent. With regard to legacy systems, and following some interpellations by Member States, the Commission stated that Stakeholders will have to comply with the SES Regulations by 20 April 2011 if not otherwise stated in relevant implementing rules.

The reported confusion regarding the requirements in Article 5 for airborne constituents is accepted because of the potentially misleading title of Annex V, which should only refer to Article 5(1). All manufacturers of constituents have to adhere to the requirements of Article 5(1) but, for the airborne constituents, the use of "without prejudice" in the prescription means that the usual airworthiness certification process (described in Article 5(2)) can alternatively be used to demonstrate conformity.

With regard to the request for transitional arrangements for the verification of systems, the Conformity Assessment processes, and the issuance of the appropriate EC Declaration, are requirements set out in the SES interoperability Regulation (EC) No 552/2004, amended by Regulation (EC) 1070/2009. These requirements are irrespective of the content of the draft ACID IR. Moreover, in practice, ANSPs have until 9 February 2012 to comply with the applicable requirements of the draft ACID IR. It is considered that this gives sufficient time to make the required systems changes and, where required, to issue the appropriate declarations (e.g. for 'putting systems into service').

The performance requirements contained in Article 3(1) of the draft ACID IR can be verified by comparing the total number of IFR GAT flights with the number of these flights that have operated wholly within the required ground system capability for use of the 'Downlinked Aircraft Identification Feature'. For example in the case of Article 3(1)(a), there will be a need to capture statistics on the total number of IFR GAT over-flights of a particular FIR or UIR (as defined in Annex I of the draft ACID IR), together with statistics on the proportion of these over-flights that have operated wholly within the coverage of the required ground capability to use the 'Downlinked Aircraft Identification Feature'. However, it will not be necessary to capture statistics on whether or not the 'Downlinked Aircraft Identification Feature' was actually used on specific individual flights made within the ground system coverage.

The requirements set out in Annex VI (4) of the draft ACID IR for personnel competencies are generic requirements, across all the SES interoperability implementing rules, which set up the conditions for allowing ANSPs to undertake verification activities. It is up to each ANSP and the responsible NSA to determine how to document and prove the fulfilment of these conditions.

Action

Article 3(1) will be amended as follows:

"Member States responsible for the provision of air traffic services in the airspace defined in Annex I shall take the necessary measures to ensure that, by 9 February 2012, a capability is implemented to be able to establish individual aircraft identification using downlinked aircraft identification for:

(a) at least 50% of over-flights of the defined airspace of the individual Member State; and

(b) at least 50% of the combined total number of arriving flights and departing flights within the defined airspace of the individual Member State.

All references to "Article 5" contained within Annex V will be amended to read "Article 5(1)".

2.2.3.6 Definitions

Comment

One Stakeholder felt that the definition of 'Notified Body' needed to be added to the definitions in Article 2 of the draft ACID IR.

A small discrepancy in the definition 'aircraft identification' was noted when compared to the definition contained in the draft SPI IR. It was felt that a common definition should be applied across all regulations.

Response

Notified Bodies are defined in the SES interoperability Regulation (EC) No 552/2004, amended by Regulation (EC) 1070/2009. The EU drafting guide explains that a term has to be defined within a regulation if it has several meanings but must be understood in only one of these meanings. In this case, a 'Notified Body' is an entity, fulfilling relevant requirements, which has been designated to carry out Conformity Assessment according to a Directive. It is a standard term that is used in EU legislation and, therefore, it does not need to be specifically defined within the draft ACID IR.

The definition of 'aircraft identification' in the draft ACID and SPI IRs will be harmonised.

Action

Art 2(1) will be amended to read:

“aircraft identification' means a group of letters, figures or a combination thereof which is either identical to, or the coded equivalent of, the aircraft call sign to be used in air-ground communications, and which is used to identify the aircraft in ground-ground air traffic services communications.”

2.2.3.7 Compatibility with ADS-B

Comment

A joint response from several aircraft operator associations argued that the end-goal of using ADS-B as the principal civil surveillance technology means that the continued deployment of, and charging for, civil radar installations is unwarranted. Therefore, it was considered that, wherever appropriate, the civil airspace user requirement for phasing out of radar should be reflected in the draft ACID IR.

An aircraft manufacturer stated that the call signs used by the controllers, which represent individual aircraft identification numbers/letters, are not the same as the displays and indications used by the pilot on the 'Cockpit Display of Traffic Information'. Therefore, it was argued that consideration should be given to achieving voice and data exchange consistency in draft ACID IR.

Response

The prescriptions in draft ACID IR have been specifically drafted to be technology-independent, thereby leaving maximum flexibility to Stakeholders to deploy the most effective Means of Compliance. The requirements in the draft ACID IR will permit the use of the 'Downlinked Aircraft Identification Feature' through deployment of Mode S, WAM and ADS-B, as determined by Stakeholders. The approach taken is fully consistent with the SESAR ATM concept as defined in Deliverable D3, and the cost-effectiveness of service provision should be addressed in the context of the SES performance scheme.

To ensure that global interoperability is maintained, the prescriptions in draft ACID IR are entirely consistent with ICAO Doc 4444 (PANS-ATM) procedures for the downlinking of aircraft identification and for ensuring individual aircraft identification to enable the provision of an ATS surveillance service.

Action

Nil required.

ANNEXES

ANNEX A

Annex A contains a list of those Stakeholders that provided comments on the draft ACID IR during the formal consultation.

ANNEX B

Annex B provides a table containing all the comments provided by Stakeholders. The table cross-refers the comments with the associated sections of the SOR and shows the 'Disposal' of each comment, i.e. 'Accepted', 'Partially Accepted', 'Rejected' or 'Noted'.

ANNEX A

**LIST OF STAKEHOLDERS WHO PROVIDED COMMENTS TO
THE FORMAL CONSULTATION**

The Stakeholders who provided comments on the draft ACID IR during the formal consultation are listed below.

Country	Organisation	Contact Name
Austria	Austro Control	Gerhard WAGNER
Belgium (BE)	Civil Aviation Authority & Belgocontrol	Erika BILLEN
Belgium (BE)	IATA, AEA and IACA	Araceli CAL (AEA) Kieran O'CARROLL (IATA) Erik MOYSON (IACA)
Canada (CA)	IFATCA	Željko OREŠKI
Czech Republic	Ministry of Transport, Civil Aviation Department	Oldrich GORGOL
Denmark	Naviair	Finn SKOV
France (FR)	DSNA	Jean BEIJARD
France (FR)	DIRCAM (French Military Air Traffic Management)	Cdt Thierry BUSIN
France (FR)	ICAO	Sven HALLE
Germany (DE)	Federal Supervisory Authority for Air Navigation Service	Horst-Ulrich VOLKMAR
Germany (DE)	DFS Deutsche Flugsicherung GmbH	Andreas KREBBER
Germany (DE)	AFSBw	OTL Heinrich WOELPERN
Netherlands (NL)	NSA - Nederland (LVNL)	Jos NOLLET
Netherlands (NL)	Luchtverkeersleiding - Nederland (LVNL)	Paul de KRAKER
Norway (NO)	Civil Aviation Authority	Einar GUDIM
Norway (NO)	Avinor AS	Atle Berge KRISTIANSEN
Poland (PO)	Polish Air Navigation Services Agency	Dariusz JASINSKI
Portugal (PT)	NAV Portugal	José VERMELHUDO
Romania (RO)	Civil Aeronautical Authority	Cezar POPESCU
Sweden (SE)	LFV	Anders ANDERSSON
Switzerland (CH)	Skyguide	David VOGEL
United Kingdom	Civil Aviation Authority & Ministry of Defence	John BANKS

Country	Organisation	Contact Name
United Kingdom	NATS	Robert WESTERBERG
United States	Boeing Commercial Airplanes	Jill DEMARCO

ANNEX B

TABLE OF RECEIVED COMMENTS

1. The following table details all the comments received as part of the formal consultation on the draft ACID IR and cross-refers each comment to an appropriate response within the Summary of Responses document.
2. The table headings are as follows:

ENPRM/10-003 - Draft Implementing Rule on Aircraft Identification						
§ No	Comment	Reason(s) for Comment	Proposed Change/Text	Ref § No SOR	Disposal	Organisation

- a) The first column cross-refers to the relevant Article and paragraph number in the version of the draft ACID IR that was issued for formal consultation.
- b) The 'Comment', 'Reason(s) for Comment' and 'Proposed Change/Text' columns copy exactly the textual comments as provided in the Consultation Response Sheets.
- c) The '**Reference § No SOR**' column cross-refers to the relevant section of the SOR.

Note - If a comment does not require a detailed response reference is just made in this column to the general remarks in paragraph 2.2.1 in the main body of the document.

- d) The 'Disposal' column provides information about the way the received comment was treated
- e) The 'Organisation' column identifies the source of the comment

ENPRM/10-003 - Draft Implementing Rule on Aircraft Identification						
§ No	Comment	Reason(s) for Comment	Proposed Change/Text	Ref § No SOR	Disposal	Organisation
General Comment	IATA AEA and IACA support implementation of Multilateration (MLAT) to meet specific surveillance requirements when supported by clear operational requirements, separation minima, and a Cost-Benefit Analysis (CBA) involving all stakeholders. If MLAT is deployed, it should be configured to facilitate integration of ADS-B ground stations in a future surveillance mix.	Global MLAT separation standards have been agreed. The ICAO Aeronautical Surveillance Panel (ASP) and the Separation and Airspace Safety Panel (SASP) have developed ICAO guidance materials and separation minimums of 5nm and 3nm for MLAT/WAM. In light of this and the end goal of using ADS-B as the principal means of civil aeronautical surveillance, the continued deployment of and charging for civil radar installations is unwarranted.	Wherever appropriate in the document, ensure that the civil airspace user requirement for phasing out of radar is reflected in the IR.	2.2.3.7	Rejected	Belgium, IATA, AEA, IACA
General comment	The regulations, air and ground constituents, and aircraft identification operational concept contemplated in this rulemaking should also consider the need to develop mechanisms that allow pilot and controller to unambiguously identify third party aircraft in support of future airborne surveillance applications (ADS-B In).	It is imperative for safety and proper execution that voice communication between pilots and controllers to identify third party aircraft (call sign) is consistent with that displayed in airborne applications (ICAO compliant). Currently, the call signs used by the controllers that represent individual aircraft identification numbers/letters are not the same as the displays and indications used by the pilot on the Cockpit Display of Traffic Information.	Consider voice and data exchanges consistency in ACID IR.	2.2.3.7	Rejected	United States, BOEING COMMERCIAL AIRPLANES
general	The German Military refers to Para 6.4 of the Justification material for ACID and underlines the statement that only a minority of military authorities will have a full Mode S operational capability			2.2.2.2	Rejected	Germany, AFSBw

	<p>by 2012. German military aerodrome radar sites will be replaced in the coming years by Mode S capable radars, but budget constraints may lead to delays on the timeline.</p> <p>GE mil App units provide ATS occasionally to IFR/GAT within their AoR. In February 2012 these units will not yet be ready to use the ACID feature for individual aircraft identification. Therefore an exemption policy needs to be defined in order to accommodate conventional Mode 3/A operations for these units. In addition provisions need to be established to enable OAT training and operations using Mode 3/A for individual aircraft identification as well as for the identification of the controlling unit.</p>					
general	<p>Interpretation of the IR is ambiguous in many places. The explanation provided by the justification material refers often to Community Specifications not yet existing .</p> <p>Also there is a close relationship with the IR NMF, which is not yet available.</p> <p>This leaves us with an IR open for interpretation, which is difficult to accept.</p>			2.2.3.3	Noted	Netherlands, LVNL
General	<p>Interpretation of the IR is ambiguous in many places. The explanation provided by the justification material refers often to Community Specifications not yet existing .</p> <p>Also there is a close relationship with the IR NMF, which is not yet</p>			2.2.3.3	Noted	Netherlands, NSA

	available. This leaves us with an IR open for interpretation, which is difficult to accept.					
Global	On the document ses_iop_acid_rul_v1_0.pdf there reference to a "notified body"	There is no definition of what can be a definition of a notified body	Add the definition of "notified body" to article 2 - Definitions	2.2.3.6	Rejected	Portugal, NAV PORTUGAL
Specific Comments	As ANSPs, entities of French Ministry of Defence provide IFR GAT services. Nevertheless, military ANSPs are not subject to the SSR code shortage that civilian ATC faces.			2.2.2.2	Noted	France, DIRCAM
Specific Comments	For technical and procurement cycle reasons, the French military radar stations providing surveillance services to civil and military GAT flights will not be all able to establish individual aircraft identification using downlinked aircraft identification by 2 January 2020. The upgrade of entire radar stations is expected to be achieved beyond 2020.			2.2.2.2	Noted	France, DIRCAM
Recital (2)	The term "radar transponder code" is very much focussed of radar technology. A more technology independent term as "transponder code" is preferable.	RADAR – Radio Detection and Ranging would be applicable for Radar and MLAT technologies, but not for ADS application.	Use "transponder code" instead of "radar transponder code".	2.2.1	Partially Accepted (Consistency with ICAO terminology is required: i.e. "SSR codes".)	Austria, AUSTRO CONTROL
Article 1, subject matter and scope	Article 1.3 defines the geographical area of application for this Implementing Rule (all flights operating as GAT in the airspace of the ICAO EUR and AFI region) and ICAO disagrees with this approach, as it is not in compliance with the existing ICAO provisions in Annex 2 and Annex 11.	In the recitals (whereas section) it has been correctly stated that the area of application of this IR should be within the airspace of the Single European Sky. If EU Member States would also like to apply this regulation to areas outside of the Single European Sky airspace, they can do this in line with existing ICAO provisions (e.g. Regional Air Navigation Agreement), but it	Article 1.3 should be as follows: The Regulation shall apply to all flights operating as general air traffic in accordance with instrument flight rules within the European airspace where the Member States are responsible for provision of air traffic services in accordance with the service provision regulation (EC) No 550/2004 amended by Regulation (EC) No 1070/2009.	2.2.3.2	Partially Accepted	France, ICAO

		cannot be enforced by them to other ICAO regions.				
Article 1, 3.	For Coastal States, FIR boundaries often extend beyond the 12NM limit of Territorial Waters. EU rules relating to airspace (whether derived from SES, EASA or elsewhere) are presumed to be mandatory only in the territory to which the Treaty applies (i.e. States' land masses and territorial waters). Beyond this, States responsible for the provision of ANS in High Seas airspace may choose to voluntarily apply some or all of the requirements of a particular piece of EU legislation provided they are not in conflict with the ICAO Rules of the Air. This Regulation is therefore presumed to apply directly only to those aircraft flying within SES airspace in accordance with the Service Provision Regulation.	Clarification requested.		2.2.3.2	Noted	United Kingdom, NATS
Article 2, 1.	There is a small discrepancy in the definition 'aircraft identification' when compared to the draft SPI IR.	A common definition should be applied across all Regulations.	Art 2(1) – "aircraft identification means a group of letters, figures or a combination thereof which is either identical to, or the coded equivalent of, the aircraft call sign to be used in air-ground communications, and which is used to identify the aircraft in ground-ground air traffic services communications."	2.2.3.6	Accepted	United Kingdom, NATS
Art 2(1)	There is a small discrepancy in the definition 'aircraft identification' when compared to the draft SPI IR.	A common definition should be applied across all Regulations.	Art 2(1) – "aircraft identification means a group of letters, figures or a combination thereof which is either identical to, or the coded equivalent of, the aircraft call sign to be used in air-ground communications, and which is	2.2.3.6	Accepted	United Kingdom, CAA & MOD

			used to identify the aircraft in ground-ground air traffic services communications.”			
Article 3, performance requirements	The EANPG is the responsible group to ensure the continuous and coherent development of the European Air Navigation Plan (ANP) and States respect the ANPs at all times. If, as a result of this IR, changes to FIR boundaries or to facilities and services provided within an FIR occur, these changes have to be inserted to the ANP in accordance with the official ANP amendment procedures.	In article 3.1, Member States are required to implement the defined aircraft identification capabilities in their FIRs (as specified in Annex 1) by defined implementation dates (2012, 2020). This is a clear change to the currently defined facilities and services that are described for each FIR in the current version of the ANP and therefore has to be updated/aligned with the ANP amendment procedure.	There should be note added to article 3 explaining the link to the European Air Navigation Plan.	2.2.3.2	Partially Accepted	France, ICAO
Article 3, section 1	The performance requirements should be further clarified: - What is meant by ‘flights’? Are VFR-flights included in the quoted figures? - Are local (national) flights included in the quoted figures? How are the quoted performance figures verified?	Adding the requested information into the text of the implementing rule will make this one clearer and more effective.		2.2.3.1 2.2.3.5	Rejected	Belgium, CAA & BELGOCONTROL
Article 3 paragraph 1	"at least 50% of all over-flights along their entire route within the defined airspace of the individual Member State; and"	Difficulties to classify routes if they when they not pre-defined as in Free-route airspace	Remove the reference to the route. Proposed text: "at least 50% of all over-flights along the defined airspace of the individual Member State; and"	2.2.3.5	Accepted	Portugal, NAV PORTUGAL
Article 3(2)	French MOD is undertaking an upgrading program of its surveillance radar named "SCCOA4" that will enable to interrogate in mode S. Due to the military long procurement cycle, this mode S capacity will not be available on all the French military radars by 2 January 2020 as required in article 4(3).	Military entities provide GAT surveillance services. Despite of procurement cycle which will ensure full capability beyond the deadline of 2 January 2020, military ANSPs shall continue to be able to provide these services using discrete SSR codes.	Add at the end of the Article 4 (3): "Military ANSPs, when providing surveillance service according to article 1, may continue to establish individual aircraft identification using discrete SSR codes. By 2 January 2019, Military ANSPs will provide their procurement plans regarding	2.2.2.2	Rejected	France, DIRCAM

	Therefore, there is a need to allow military continuing to establish individual aircraft identification using discrete military SSR codes.		<i>downlink aircraft identification systems."</i>			
Art 3., §2	Critical: Potential "scope creep" in the applicability of this IR.	Art 3, (2) "Member States shall ensure that, by 2 January 2020, a capability is implemented to be able to establish individual aircraft identification using downlinked aircraft identification for all flights. " Scope of the IR, as document in the IR (Art.1 §3), and in the supporting "justification material" (various references) is GAT operating under the IFR (IFR/GAT).	Amend Art 3(2) to read "Member States shall ensure that, by 2 January 2020, a capability is implemented to be able to establish individual aircraft identification using downlinked aircraft identification for all flights operating as general air traffic in accordance with instrument flight rules. "	2.2.3.1	Rejected	Switzerland, SKYGUIDE
Article 3 §5 (b) page 5	Depending upon interpretation, Article 3, paragraph 5.b may be too restrictive for the ANSPs using the "Downlinked Aircraft Identification Feature" as a primary means of establishing individual aircraft identification by 9 February 2012.	- ICAO doc 4444 §8.1.4 does not mandate this requirement but make a recommendation using a "should" - As mentioned in the justification material, for these ANSPs, this ACID IR should bring no additional requirement to improve the SSR code assignment capabilities within their systems.	Precise that this does not apply to ANSPs using the "Downlinked Aircraft Identification Feature" as a primary means of establishing individual aircraft identification by 9 February 2012	2.2.2.4	Partially Accepted	France, DSNA
Article 3, 6 (c)	Possible issue with non-harmonisation of procedures	Where individual aircraft identification is established using downlinked Mode S ACID, article allows neighbouring States to determine the Mode A conspicuity code. This would lead to different codes being used so the functionality no longer becomes 'conspicuous'. How would Eurocontrol intend to ensure compliance with ICAO Regional Code Allocation Plans if this variability is allowed. Clarification requested		2.2.2.1	Partially Accepted	United Kingdom, NATS

Article 3, 6 (c)	The conspicuity code selected for the assignment to aircraft whose identity is established using the downlinked aircraft identification should be used solely for that purpose.	In accordance with the justification material the SSR code is assigned for the benefit of any adjacent centres that need conspicuity and situational awareness on those flights where the downlinked aircraft identification has been confirmed as being correct.	Amend Art 3(6)(c) to read 'a conspicuity code is agreed with other Member States for assignment solely to aircraft where individual aircraft identification is established by using downlinked aircraft identification.'	2.2.2.1	Accepted	United Kingdom, CAA & MOD
Article 4.1	".... a safety assessment, including hazard identification, risk assessment and mitigation, conducted by the parties concerned." "including hazard identification, risk assessment and mitigation" is too restrictive.	It is important to obtain a safe system. We should regulate a result and not the means. Alternative methods can give the same results.	".... a safety assessment, including hazard identification, risk assessment and mitigation, or any equivalent methodology, conducted by the parties concerned."	2.2.3.5	Rejected	Belgium, CAA & BELGOCONTROL
Article 5	Does the conformity and suitability need to be checked on legacy systems ?	These requirements should mean that suppliers and manufacturers need to be contacted. It is not possible to ask manufacturers to provide a declaration of conformity and suitability for older systems.	Limit these requirements in time : e.g. systems in use before 20/10/2005 are exempted. Add a paragraph 5.3 to the article to exclude legacy systems and fix the exemption date.	2.2.3.5	Rejected	Belgium, CAA & BELGOCONTROL
Art.5 (1)., line 3	Critical: Apparent drafting error (omission).	Text " ... manufacturers of constituents of the systems referred to in Article 1(2) shall assess ..." Article 1(2) has 4 sub-paras: sub-para (a) referring to airborne constituents; and sub-paras (b), (c), (d) each referring to aspects of the ground infrastructure. Annex V Part A refers explicitly to (the whole of) Article 5, with the effect that all constituent components mentioned in Art.5 shall be subject to conformance assessment and declaration. This then explicitly includes the ground constituents. However, the ground constituents (and verification etc by ANSPs)	Amend text " ... manufacturers of constituents of the systems referred to in Article 1(2) shall assess ..." to read "" ... manufacturers of constituents of the systems referred to in Article 1, 2. (a) shall assess ..."	2.2.3.5	Partially Accepted	Switzerland, SKYGUIDE

		<p>are the specific subject of Annex V Part B (referring to Art.6(1)) and Annex V Part C (referring to Art.6(2)).</p> <p>It is then that Annex V Part A has the effect of requiring, in addition to the application of the provisions specifically applicable to ground systems, the same provisions (relating to conformance assessment and declaration) that are applicable to airborne equipment.</p> <p>Because of the specific provisions of Annex V parts B & C, it appears then that additional certification appears to be unintentionally included.</p>				
Article 6 and Annex V Part B & C	The verification for systems is required, but there are no transitional arrangements foreseen.	Due to the impact of these requirements and the big effort it takes to set up the process, it seems to be wise to foresee at the end of the implementing rule an article with transitional arrangements for the implementation of this part of the requirements.	Foresee a transition period for the verification process of all systems (ref. art. 1) of at least one year after the entry into force of the implementing rule.	2.2.3.5	Rejected	Belgium, CAA & BELGOCONTROL
Art 7(6)	There is an implication that there may be occasion to change the downlinked aircraft identification in flight. If this is the case the capability should be included within either this Regulation or the SPI IR.	Not all aircraft have the capability to change the downlinked aircraft identification in flight.	<p>If there is a requirement to be able to change the downlinked aircraft identification in flight it should be a requirement of this Regulation or the SPI IR. Further, to aid clarity the term 'service provider' in Art 7(6) should be replaced with 'air traffic service provider'.</p> <p>If there is not a requirement to be able to change the downlinked aircraft identification in flight the words 'unless requested by the service provider' should be deleted from the text of Art 7(6).</p>	2.2.2.3	Partially Accepted	United Kingdom, CAA & MOD

Annex I	Add Austria – FIR Wien to the list.	Austro Control intends to be part of the first batch of states implementing Mode S	Add “Austria – FIR Wien” to the list.	2.2.1	Accepted	Austria, AUSTRO CONTROL
Annex 1	Why is the list in Annex 1 limited to some FIR/UIR ?	This should be an harmonised approach. The current annex discriminates between the Member States. What will happen with Switzerland ?	Harmonise Annex 1.	2.2.3.2	Rejected	Belgium, CAA & BELGOCONTROL
Annex I	Critical: Switzerland is omitted.	Do not know whether this is intentional (due inter-institutional arrangements, status as a "Member State", etc.), or not. However, the effect is that, if Switzerland is not included in Annex I , then this determines: 1. ref Art 3 (1): the airspace defined for use of establish individual aircraft identification using downlinked aircraft identification by 09-Feb'12 (that is, the Airspace within which Switzerland provides ATS, including France, German and Italian delegated airspace will be exempt). 2. the 50% performance requirements will not apply within the Airspace within which Switzerland provides ATS; 3. ref Art3 §4: Swiss ANSP(s) will not be required to implement the capability to establish individual aircraft identification using downlinked aircraft identification (02-Jan'20 requirement) 4. ref Art.3 §4: because not in Annex I , the performance requirements detailed in Annex II will not apply ; the (SSR only) performance requirements detailed in Annex III will apply and various other flow-on	IF: the provisions of Annex II (and other provisions – such as directed provisions of Annex IV, safety requirements) are intended to apply ... THEN: Include Switzerland in Annex I .	2.2.3.2	Rejected	Switzerland, SKYGUIDE

		effects.				
Annex II §2	<p>Critical: §2 of Annex II is not fail-safe or fail-soft from either the real-world or operational perspective. Rewrite to avoid double-negatives, and in a way to establish a fail-safe / fail-soft system design and functionality.</p>	<p>"The conspicuity code ...shall be assigned to all aircraft except in the following situations ..." This mandates that there are (legally) only a limited set number of instances when the conspicuity code may not be assigned; in all other cases, the conspicuity code SHALL BE assigned. There may be other (as yet unforeseen) circumstances where the conspicuity code would be contra-indicated, but to do so (to not use the conspicuity code in such circumstances) would contravene the IR. This either demeans the legal sensibility of the IR; or imposes a "compliance mentality" at the expense of operational safety &/or expediency. It would be better to specify the routine circumstances for when the conspicuity code may be assigned; and then to separately detail the systemic circumstances (exceptions) for when the conspicuity code shall not be assigned. (Note- use "may be" as this establishes the high-level framework, with the comprehensive conditions for application detailed at a lower-level working arrangements.)</p>	<p>The conspicuity code laid down in Article 3(6) (c) may be assigned to aircraft in the following situations: (a) When the integrated initial flight plan processing system has communicated that* the aircraft is eligible for the assignment of the conspicuity code; (b) When the downlinked aircraft identification matches the corresponding entry in the flight plan for that aircraft; The conspicuity code laid down in Article 3(6) (c) shall not be assigned to aircraft in the following situations: (c) When contingency measures have been put in place by an air navigation service provider experiencing unplanned ground surveillance sensor outages; (d) Where exceptional military contingency measures require air navigation service providers to assign discrete SSR codes to aircraft; (e) Where an aircraft which is eligible for the assignment of the conspicuity code laid down in Article 3(6) (c) exits or is otherwise diverted outside the airspace volume referred to in paragraph 1. *Note – text highlighted in RED is recommended for deletion via per separate input, and for consistency of response is shown here. Rationale: the terms of reference for the drafting of this</p>	2.2.3.3	Partially Accepted	Switzerland, SKYGUIDE

			IR explicitly indicate that the IR shall establish the high level requirements, and shall avoid prescribing specific means by which the outcome is to be achieved.			
Annex II item 1	Which entity (who) should declare "airspace volumes where individual aircraft identification is established by using downlinked aircraft identification" to the centralised flight planning processing and distribution service?	The role of the various stakeholders interested in the declaration of airspace should be clarified, especially in States where more than one air navigation service provider are active.		2.2.3.3	Rejected	Belgium, CAA & BELGOCONTROL
Annex II, par 2a	The use of the conspicuity code only after flagging (approval) by the CFMU, as described in paragraph 2a is too limited.	LVNL plans to use the conspicuity code in the domestic off shore helicopter operations within the Northsea Area Amsterdam (currently class Golf airspace). Although these flights will not be flagged by CFMU as "ELS flights", LVNL would like to use the conspicuity codes for these flights.	Add a paragraph stating: Special domestic use of the conspicuity code is allowed only if the absence of nuisance for neighbouring non-ELS states is guaranteed.	2.2.2.1	Accepted	Netherlands, LVNL
Annex II, par 2a	NSA-NL support the comments from LVNL: "The use of the conspicuity code only after flagging (approval) by the CFMU, as described in paragraph 2a is too limited".	LVNL plans to use the conspicuity code in the domestic off shore helicopter operations within the Northsea Area Amsterdam (currently class Golf airspace). Although these flights will not be flagged by CFMU as "ELS flights", LVNL would like to use the conspicuity codes for these flights.	Add a paragraph stating: Special domestic use of the conspicuity code is allowed only if the absence of nuisance for neighbouring non-ELS states is guaranteed.	2.2.2.1	Accepted	Netherlands, NSA
Annex II (2) (a)	Text per Annex II (2) (a) is: "When the integrated initial flight plan processing system has not communicated that the aircraft is eligible for the assignment of the conspicuity	The intention of the IR is to provide the legal/regulatory framework for use of Mode S to support individual aircraft identification within EUR ATM context. (ref: IR justification	Amend Annex II (2) (a) to read "When the integrated initial flight plan processing system has not communicated that the aircraft is not eligible for the assignment of the conspicuity code."	2.2.3.4	Rejected	Switzerland, SKYGUIDE

	code." This prescribes specific means, rather than establishes a framework. Remove the specific reference to the integrated initial flight plan processing system – IFPS.	material, various references). Specifically, the prescription (mandating) of specific means is to be avoided. However, the draft IR specifies specific means (use of the integrated initial flight plan processing system – IFPS), thus enshrining the existence of the IFPS within European law.				
Annex II (2) (a)	Not fail-safe, not fail-soft. Drafted in the double-negative (except when ... not communicated). As written, the whole system relies then on the correct functioning of the IFPS. That is, for example, if the IFPS erroneously communicates that a flight IS eligible, but the flight is actually NOT eligible, then (all other things being equal) the flight SHALL without exception be assigned the conspicuity code (non-assignment of the conspicuity code would result in an explicit breach of the IR).	Highlights that the IFPS is an integrated component of the system, with associated safety-of-flight risk potentials. Therefore, if the IFPS is explicitly specified in the IR to be a legally required keystone component of the system enabling individual aircraft identification by Mode S within the EUR ATM context, (and the failure/incorrect functioning of which would have direct safety implications) then the IFPS shall be 1. explicitly included within the scope of this IR (at Art.1); 2. explicitly subject to specified functional capabilities, and performance requirements (similar to Annex II); and 3. explicitly subject the same "verification of systems " requirements as apply to the ANSPs (e.g., Art.6).	Various; new Articles and Annexes would need to be developed.	2.2.3.4	Rejected	Switzerland, SKYGUIDE
Annex II, 3	Annex II 2 (e) details a scenario where the conspicuity code is not to be allocated to a flight. For ATM identification purposes the non-eligible flight will therefore need to be allocated a discrete code. Para 3 confirms this premise but does not include the		3. Where the situations referred to in points 2 (a) to (e) apply, discrete SSR codes shall be assigned to aircraft in compliance with the code allocation list agreed by Member States.	2.2.1	Accepted	United Kingdom, NATS

	scenario shown in (e) as being eligible.					
Annex II, par 5	This paragraph is applicable to aircraft being transferred from neighbouring states which use the E-ORCAM method. There is no rule for the case if the aircraft is being transferred from states which use the CCAMS method.	It is uncertain how the interface between CCAMS states and non-CCAMS states is dealt with. The IR only states that non-CCAMS states must check whether the CCAMS assigned code can be retained. As non-CCAMS states are not connected to CCAMS, it is unclear how this could be done.	CCAMS states shall also be able to ensure assigned codes can be retained when flights are bound for ELS airspace.	2.2.2.5	Rejected	Netherlands, LVNL
Annex II, par 5	NSA-NL support the LVNL comments: "This paragraph is applicable to aircraft being transferred from neighbouring states which use the E-ORCAM method. There is no rule for the case if the aircraft is being transferred from states which use the CCAMS method".	It is uncertain how the interface between CCAMS states and non-CCAMS states is dealt with. The IR only states that non-CCAMS states must check whether the CCAMS assigned code can be retained. As non-CCAMS states are not connected to CCAMS, it is unclear how this could be done.	CCAMS states shall also be able to ensure assigned codes can be retained when flights are bound for ELS airspace.	2.2.2.5	Rejected	Netherlands, NSA
Annex VI paragraph 4	"The air navigation service provider must ensure that the personnel involved in verification processes, have sound technical and vocational training, satisfactory knowledge of the requirements of the verifications they have to carry out, adequate experience of such operations, and the ability required to draw up the declarations, records and reports to demonstrate that the verifications have been carried out."	Difficulties to get evidences for the competences described for the personnel that are involved in the verification process	Please rephrase or describe with more details how the described competences can be confirmed. "sound technical and vocational training"	2.2.3.5	Rejected	Portugal, NAV PORTUGAL